

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANNY VINCENT)	
Claimant)	
)	
VS.)	Docket No. 1,034,948
)	
WESTAR ENERGY)	
Self-Insured Respondent)	

ORDER

Respondent requested review of the January 21, 2011 Order by Administrative Law Judge (ALJ) Thomas Klein. The Appeals Board (Board) placed this matter its summary docket for a determination without oral argument.

APPEARANCES

Claimant appeared by and through Angela Trimble of Pittsburg, Kansas. Respondent appeared by and through Terry J. Torline, of Wichita, Kansas.

RECORD AND STIPULATIONS

Neither the ALJ in his Order, nor the parties in their briefs identify the record. It appears from the file that the record consists of a transcript from the Regular Hearing, held on May 25, 2010, during which respondent's counsel orally moved for the admission of certain documents relating to an arbitration hearing and decision, along with Claimant's (separately filed) Motion to Admit Sworn Deposition Testimony of Witnesses, along with briefs in support of both motions as well as briefs to the Board in support of the respective parties' position in this appeal.

ISSUES

On May 25, 2010, the parties appeared before the ALJ for a Regular Hearing. At that time, both parties indicated that they were intending on offering into evidence a great deal of deposition and documentary evidence in support of their respective positions. Specifically, respondent orally moved to admit the transcript from an arbitration hearing as well as the result of that arbitration which dealt with claimant's termination from

respondent's employ. Claimant also indicated his intention of offering a number of depositions generated as a result of another co-employee's civil lawsuit against respondent for wrongful discharge which stemmed from the same circumstances that led to claimant's termination. The parties informed the ALJ that the proposed evidence would make the trial in this matter move more efficiently if they knew, in advance, that the evidence was admissible in its present form. Thus, the parties persuaded the ALJ to allow them to argue and brief their motions and at that point, the ALJ would rule upon the admissibility of the evidence. Only after the ALJ had ruled on the admissibility of that evidence, would the Regular Hearing proceed and the parties would continue to litigate the claim to its final resolution before the ALJ.

On January 21, 2011, the ALJ issued an order finding as follows:

The court finds that the decision of the arbitrator are [sic] not binding on it, and that its findings and holdings have no relevance to the matter before the workers compensation court. Respondent's motion is denied. Claimant's motion is likewise denied. Depositions taken in furtherance of another case, in other jurisdictional courts, litigating different issues, are not admissible without agreement of the parties.¹

Respondent has appealed the ALJ's determination regarding the admissibility of the Arbitration Award and the transcript of those proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, including the parties' briefs, the Board makes the following findings of fact and conclusions of law:

The Board concludes that this is an appeal from an interlocutory order which the Board is without jurisdiction to consider at this stage of the proceedings.

Respondent inaccurately couches the Order which is the subject of this appeal as a "final Order". The ALJ's order reflects his determination as to the admissibility of the evidence proffered by respondent at the Regular Hearing. For the Board to have jurisdiction to review this order at this point in the proceedings, the appeal would have to be brought pursuant to K.S.A. 44-551(i)(1). That statute grants the Board jurisdiction to review "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a..."

The appealed Order resulted from a regular hearing and, therefore, it is not a preliminary hearing order or an award under K.S.A. 44-534a. It is an order that involves

¹ ALJ Order (Jan. 21, 2011) at 1-2.

solely the admissibility of evidence. It did not finally and completely resolve the outstanding compensability issues (which there are many) or address the compensation that might be due. To the contrary, this was a ruling on a procedural question specifically intended to afford the parties an opportunity to avoid costs associated with taking evidentiary depositions and to tailor the balance of their litigation efforts. While understandable, this attempt at an interlocutory appeal is not appropriate.

The ALJ's Order denying respondent's Motion to admit certain evidence is interlocutory in nature and does not finally and completely resolve the outstanding issues presented in this claim. To the contrary, this order merely alters the evidentiary landscape. But this decision is temporary and the ALJ could possibly change his ruling before the completion of this claim. Accordingly, the Board finds the ALJ's Order is not a final order as contemplated by K.S.A. 44-551(i)(1). The Board concludes the Order is an interlocutory order made during the litigation of a workers compensation case. Therefore, the Board lacks jurisdiction to review the order until it is contained in a final order or award.

WHEREFORE, it is the finding, decision and order of the Board that the Respondent's appeal of the Order of Administrative Law Judge Thomas Klein dated January 21, 2011, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of April 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Angela Trimble, Attorney for Claimant
Terry J. Torline, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge